IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/03/2003

CORAM

THE HON'BLE MR. JUSTICE K. SAMPATH

W.P.No.42620 of 2002
and
W.P.M.P.No.62858 of 2002

K.R. Narayanaswamy,
S/o K.V. Rengasamy,
B-2/43, BHEL Township,
Ranipet 632 402,
Vellore District. ... Petitioner

-Vs-

1. The Group General Manager,
Bharat Heavy Electricals Ltd.,
Indira Gandhi Industrial
Complex, Ranipet 632 406,
Vellore District.

2. The Executive Director,
Bharat Heavy Electricals Ltd.,
Tiruchirapalli 620 046. ... Respondents

!For Petitioner ... Mr.N. Kannadasan

^For Respondents ... Mr.B.T. Seshadri

This writ petition is filed under Article 226 of the
Constitution of India for a writ of mandamus as stated therein.

:ORDER
The prayer is for a mandamus to direct the respondents to
promote the petitioner as a Foreman with retrospective effect with all
attendant benefits arising therefrom and as an Engineer/General Foreman with
effect from 2001 with all attendant benefits arising therefrom in as much as
the Community Certificate issued in favour of the petitioner is not cancelled
so far by any competent authority.

2. The circumstances leading to the filing of the writ
petition as set out in the affidavit in support of the writ petition are as
follows:

The petitioner belongs to Konda Reddy Community, one of the

communities listed as a Scheduled Tribe under the Constitution (Scheduled Tribes) Order, 1950 passed by the President by virtue of the powers conferred upon him under Article 342 of the Constitution and listed as such under Central Act 108 of 1976. He was selected and appointed as Chargeman in the year 1986 in the office of the first respondent under the quota reserved for Scheduled Tribes. At the time of interview, he produced a Community Certificate dated 5-1-1980 issued by the Tahsildar, Avinashi, the petitioner's native place. The Tahsildar issued the said certificate after verification of records and after a detailed enquiry. At the time of his appointment, as directed by the employer, the petitioner produced the Community Certificate. The petitioner completed his probation in 1987 satisfactorily. Both at the time of his appointment and at the time his probation was completed, the petitioner's community status was verified from his service records and the office of the first respondent was satisfied about the status of the petitioner's community. The respondents promoted the petitioner as Assistant Foreman in 1991. It would appear that in 1994, the first respondent had referred the petitioner's Community Certificate for verification without any valid reasons. The Revenue Divisional Officer, Tiruppur, conducted an elaborate enquiry, during which the petitioner produced numerous documents in proof of his claim that he belonged to Scheduled Tribe Community. The Revenue Divisional Officer, however, did not properly appreciate the contents of the numerous documents produced proving that the petitioner belonged to the Scheduled Tribe Community. The petitioner moved this Court in W.P.No.1469/95 to forbear the then District Collector, Coimbatore, as well as the Revenue Divisional Officer, Tiruppur, from proceeding further with regard to the verification of his community status. On 5.6.2002 this Court disposed of the writ petition with an observation that the State Government had subsequently constituted a Committee to verify the correctness of the Community Certificate and directed the petitioner to approach the said Committee. The petitioner accordingly approached the Committee. No final order has been passed so far. In 1996 itself, promotion of the petitioner to the post of Foreman became due. It is a time bound promotion. It has to be given effect to in respect of all the employees irrespective of the community to which they belong. The first respondent, on a wrong assumption that the pendency of the verification of the Community Certificate of the petitioner was a bar to promote him, kept his promotion in abeyance. The petitioner gave several representations. By communication dated 13-12-1999 the first respondent informed the petitioner that his promotion would be considered only on the completion of the proceedings relating to his community status. In the meantime, another promotion became due in 2001. The petitioner gave a representation on 8.7.200 2. The first respondent not having considered the name of the petitioner for promotion with retrospective effect as Foreman in the year 1 996 and further promotion with effect from 2001, the present writ petition has been filed.

3. According to the petitioner, as long as the Community Certificate issued in his favour is not cancelled, there can be no justification on the part of the respondents in denying him due promotion. The petitioner is entitled to all service benefits. The enquiry with regard to Community Certificate is only a routine enquiry, which cannot be termed to be a disciplinary proceedings. The sealed cover procedure is applicable only in respect of an employee against whom disciplinary proceedings are pending

and it will not apply to the case of the petitioner.

4. A counter has been filed on behalf of the respondents to the following effect:
At the time the petitioner was selected as a Technician Apprentice in 1983 he declared himself as belonging to Konda Reddy Community. After the apprenticeship was over in February, 1986, recruitment was done to clear the backlog of the reservation category and at that point of time, the petitioner was appointed as Chargeman on 5-3-1986. The petitioner produced a certificate in the prescribed form by the Additional Judicial First Class Magistrate, Coimbatore, dated 28-2-1986 certifying that the petitioner belonged to Konda Reddy Community, a Scheduled Tribe. The District Collector, Coimbatore, informed the respondents that the petitioner did not belong to Konda Reddy Community. The respondents, therefore, took disciplinary proceedings against the petitioner. The petitioner filed W.P.No.1469/95 before this Court and on 5-6-2002 this Court disposed of the writ petition observing that the District Level Committee constituted to examine the matters regarding the correctness of the certificate issued to the persons as belonging to SC and ST shall examine the matter relating to the community status of the petitioner and the petitioner should apply to the Committee to have the matter examined. The petitioner was also asked to place all materials before the Committee. The respondents informed the District Collector, Coimbatore, to take appropriate action to examine the correctness of the certificate issued to the petitioner. The matter is pending before the District Collector, Coimbatore. The claim of the petitioner that he belongs to Konda Reddy Community will be subject to final disposal by the competent authorities. Declaration of probation has nothing to do with the verification of the community status of a person in service. The mere promotion of the petitioner as Assistant Foreman does not mean that his community status has been accepted. The District Collector having informed the respondents that the petitioner did not belong to Scheduled Tribe, the matter was investigated by him and not otherwise. The claim of the petitioner for promotion from Assistant Foreman to Foreman was considered by the respondents through a Departmental Promotion Committee in 1996. The recommendation was kept in a sealed cover. The claim of the petitioner that he ought to have been promoted in 1990 itself is not an absolute position as the community status of the petitioner was under investigation. When his community status was under investigation, the petitioner could not claim absolute right for being considered for promotion. It is not correct to say that the petitioner was due to be promoted as an Engineer/General Foreman in 2001. Only if an employee had put in five years of service as Assistant Foreman, he would be eligible to be considered for promotion. The petitioner not being a Foreman as on date, he was not considered for promotion in the year 2001 as General Foreman/Engineer. His claim is not correct. There is no absolute and automatic entitlement to a superior post or scale as per law. Promotion is not a matter of right. The petitioner will be considered for promotion subject to the rules of the company upon confirmation of his community status as Scheduled Tribe by the competent authorities. W.P.No.13492/99 filed by the petitioner was disposed of on 17-8-1999 and the appeal of the petitioner was disposed of by the respondents on 13.12.1999 in compliance with the direction of this Court. The petitioner was informed of the correct position of the

matter. The writ petition deserves to be dismissed.

5. The learned Counsel for the petitioner, besides reiterating the grounds raised in the writ petition, relied on the following judgments:

(1) MADHURI PATIL VS. ADDITIONAL COMMISSIONER, TRIBAL DEVELOPMENT (AIR 1995 SC 94)

(2) R. KANDASAMY VS. CHIEF ENGINEER, MADRAS PORT TRUST (1997(7) SCC 5 05)

(3) N. THAYANANDAR VS. STATE OF TAMIL NADU AND OTHERS (2002 Writ L.R. 866)

and three unreported decisions, viz. (1) order dated 4.4.1997 in W.P.No.14668/92 (T. MADHIVANAN AND OTHERS VS. RESERVE BANK OF INDIA, MADRAS); (2) order dated 19-6-2001 in W.P.Nos.14096/95 and 17549/97 (V. RAMADURAI VS. BHARAT HEAVY ELECTRICALS LTD. ETC.); and order dated 11-10-2002 in W.P.No.23616/2001 (R. USHARANI VS. THE BANK OF BARODA ETC.) which will be referred to in more detail in the course of the order.

6. Mr.B.T. Seshadri, learned Counsel for the respondents, submitted that the enquiry into the genuineness of the Community Certificate produced by the writ petitioner is still going on and that if ultimately it is found that the certificate produced is a bogus one, the respondents would be without a remedy if on the basis of the said certificate, benefits like promotion and revision of scale of pay are to be given to the petitioner. The learned Counsel further submitted that in the event of the certificate being found to be genuine, the petitioner would be entitled to all accumulated benefits from the date in 1996 when he became eligible to be promoted. The learned Counsel further urged that promotion from Assistant Foreman to foreman is not a matter of course and that the petitioner had really not become entitled to that as he had not completed the requisite number of years for being considered for such promotion. The learned Counsel finally submitted that the petitioner could await the result of the proceedings pending in respect of the Community Certificate issued to him.

7. Indeed, in R. KANDASAMY VS. CHIEF ENGINEER, MADRAS PORT TRUST (1 997(7) SCC 505), it has been observed that, "the certificate which was originally issued validly, would continue to hold good and it is not open to the authorities to insist on a fresh certificate from the Revenue Divisional Officer."

In the case before the Supreme Court, the appellant had filed a writ petition in this Court seeking mandamus to the Chief Engineer, Madras Port Trust, the respondent therein, to accept the community Certificate of the appellant dated 10-3-1997 issued by the Tahsildar, Mambalam, for the purpose of his appointment as Mazdoor in the Madras Port Trust. The appellant was called for an interview for appointment to the post of Mazdoor by letter dated 19-8-1995 and subsequently he was called to appear for an interview on 17-11-1995 together with all the testimonials and certificates. The appellant appeared before the respondent and produced the relevant documents including the

Community Certificate issued by the Tahsildar, Mambalam, Madras, dated 10-3-198 7. The Port Trust did not accept the certificate and required the appellant to produce the latest original Community Certificate from the Revenue Divisional Officer. The request by the appellant to accept the Tahsildar's certificate produced by him and not to insist upon production of a fresh certificate from the Revenue Divisional Officer was turned down and the appellant was told that if he did not produce the certificate from the Revenue Divisional Officer on or before 30-12-1995, his name would be left out of consideration for appointment. At that stage, the appellant approached the High Court. A learned single Judge of this Court on 8-2-1996 r eferred to G.O. Ms. No.2137, dated 1-11-1989 to hold that the certificate required to be produced was from the Revenue Divisional Officer and the certificate issued by the Tahsildar was not a valid certificate. The learned single Judge dismissed the writ petition. The Division Bench dismissed the appeal therefrom. The Supreme Court referred to the said G.O. reading as follows:

"The Government directs that the Community Certificates in respect of communities included in the list of Scheduled Tribes for the purpose of appointments in public services under the Central and the State Governments, Public Sector Undertakings and quasi-Government Institutions, Banks, etc. shall hereinafter be issued only by the Revenue Divisional Officers."

The correspondence between the Joint Secretary to the Government of Tamil Nadu and the Collectors in the various Districts were clarified of the position that the permanent Community Certificate issued to Scheduled Tribes up to 11.11.1989 was valid, that only after the said date, the Revenue Divisional Officer's certificate would be insisted upon and in those circumstances, the decision by the High Court refusing relief to the appellant was improprer and could not be sustained. The Supreme Court held that the Community Certificate issued to a Scheduled Tribe candidate by the Tahsildar prior to 11.11.1989 was good and a valid one for all purposes so long as it was not cancelled. The authorities could not decline to take that into consideration and insist upon a fresh Community Certificate from the Revenue Divisional Officer. The Supreme Court further observed as follows:

"We clarify that we have only dealt with the legal aspect of the matter and have not pronounced upon the genuineness and the correctness of the Community Certificate, for which if there is any doubt, though none appear to have been raised in the High Court and none was projected before us either, ihe respondent shall have to hold a proper enquiry, but till that certificate is not cancelled, the certificate shall be treated as a valid certificate issued by the competent authority."

8. In W.P.No.14668/92 decided by P. SATHASIVAM, J. on 4-4-1997, the confirmation in service of the petitioners in the writ petition was not granted. The petitioners therein had produced Community Certificates to confirm their appointment in the Reserve Bank of India. Because of complaints received against them stating that they did not actually belong to Scheduled Tribe Communities, they were not confirmed. The employer/Reserve Bank of India requested the Revenue Authorities concerned to conduct enquiries and submit reports. As reports were not received from the Revenue

Authorities, the bank submitted that it was not in a position to confirm the services of the employees. The learned Judge held that in the absence of any categorical valid order by the competent authority or officer of the State Government stating that the Community Certificate obtained by the respective petitioners were false, it was not open to the respondent to keep the petitioners without recognising their services or confirming their services. The learned Judge, however, observed that,
"if there was any acceptable or valid order of the competent authority to show that the Community Certificates obtained by the petitioners were false, it would be open to the bank to take appropriate action in accordance with law. However, if no proceeding was pending with any of the authorities of the State Government or any valid prohibitory order by the competent forum, there was no need to keep the petitioners without recognising or confirming their services."

The learned Judge concluded his order as follows:

"Mere pendency of proceedings by the Revenue Authorities in order to find out the genuineness of the Community Certificates obtained earlier by the petitioners is not a ground for postponing the confirmation of the services of the petitioners. If the Collector or any other competent authority submits reports adverse to the petitioners' case and if there is no stay or any other order by this Court with regard to the said reports, the respondent is at liberty to initiate such action as may be available in accordance with law."

9. In W.P.Nos.14095/95 and 17549/97, K.P. SIVASUBRAMANIAM, J held that till the certificates obtained by the parties were not cancelled, the certificates would be operative. In those cases, the writ petitioner claimed to belong to Konda Reddy Community. He had obtained a Community Certificate from the Headquarters Deputy Tahsildar, Sankagiri Taluk, who was discharging the functions of the Tahsildar. The certificate had been obtained after due enquiry with the Village Munsif of Poolampatti Village. In 1977, he worked as a Technician Apprentice under the Apprenticeship Act in Bharat Heavy Electricals Ltd., Tiruchirapalli, for one year and thereafter, he was appointed on 6-4-197 8. The community Certificate was produced. On 25-5-1979 the management passed orders to the effect that the petitioner had satisfactorily completed probation with effect from 10.4.1979 and he had been promoted to the post of Chargeman with effect from 25-6-1988. However, all of a sudden by letter dated 1-7-1998 the employer informed the petitioner that the said Community Certificate produced by the petitioner was issued by the Tahsildar and in pursuance of G.O.Ms.No.2187, dated 11-11-1989, it was only the Revenue Divisional Officer, who was alone vested with powers to issue Community Certificate in respect of all Scheduled Tribes. The petitioner was directed to produce a fresh Community Certificate from the Revenue Divisional Officer on or before a particular date. According to the petitioner, the requirement as made by the employer was not correct and legal. He therefore filed a writ petition in W.P.No.14095/95. In the meantime, he was called for an interview for promotion to the next higher post. Though he was found fit, as a result of non-production of the Community Certificate from the Revenue Divisional Officer, his promotion was withheld. Subsequent to the filing of the writ petition, an enquiry was conducted regarding the genuineness of the

certificate issued by the Tahsildar and by order dated 19-7-1997, the District Collector, Salem, cancelled the certificate. According to the petitioner,the conclusion arrived at by the District Collector was illegal and erroneous and the District Collector had overlooked the documentary evidence produced by the writ petitioner. It was contented that the action of the employer calling upon the petitioner to produce a certificate from the Revenue Divisional Officer was not at all reasonable and that the original certificate issued by the Tahsildar was valid unless and until the same was set aside in a manner known to law.

10. While the first writ petition was pending, the District Collector having cancelled the Community Certificate, the second writ petition came to be filed. The learned Judge relied on MADHURI PATIL VS. ADDITIONAL COMMISSIONER, TRIBAL DEVELOPMENT (AIR 1995 SC 94) wherein it has been held that it is only the District Vigilance Committee, which is competent to go into the correctness or otherwise of the certificate originally issued by the Tahsildar and not the District Collector, and allowed the writ petition. The learned Judge relied on R. KANDASAMY VS. CHIEF ENGINEER, MADRAS PORT TRUST (1997(7) SCC 506) already referred to and allowed the other writ petition also holding that in view of the ratio of the decision of the Supreme Court that till the certificate is validly cancelled by the competent authority,it has to be accepted and acted upon and the petitioner ought to have been promoted and that in that view, the learned Judge directed the respondent to consider the claim of the petitioner for promotion ignoring the objections raised as against the certificate obtained by the petitioner and to grant him consequential benefits to which he would be entitled to. The learned Judge further observed that if the department felt that the certificate issued in favour of the petitioner required to be scrutinised, the appropriate authorities had to be moved for an enquiry before a properly constituted District Vigilance Committee.

11. The next decision is the one in N. THAYANANDAR VS. STATE OF TAMIL NADU AND OTHERS (2002 Writ L.R.866). In that case also, the Community Certificate issued by the competent authority (Tahsildar) was still in force and no steps were taken for its cancellation. The learned Judge relied on the judgment in ZIAUDDEEN VS. S. ASHOK KUMAR, PRINCIPAL SESSIONS JUDGE AND 3 OTHERS (2002 Writ L.R. 825 = 2002(2) CTC 2 57), wherein it has been observed as follows:

"There is no scope for enquiry in this writ petition and as rightly pointed out by the learned Senior Counsel for the first respondent, this writ petition for quo warranto does not have such scope for enquiry. We are also accepting the arguments of Mr.G. Masilamani that so long as the social status of the first respondent as depicted by the caste certificate issued by the authorities stands, there is a statutory presumption under Section 114 of the Indian Evidence Act that the first respondent is a Scheduled Caste and he cannot be called an usurper of the office. In fact, his Caste Certificates have not so far been questioned by anybody and as such, there was no occasion for any enquiry."

and held that,

"there was no justification in the act of the respondents before him in not treating the petitioner as a member of the Scheduled Caste, that the State Government and the Secretary of the Selection Committee for P.G. Degree/Diploma Course for 1002-2003 session had no authority in law to ignore the Community Certificate, which was holding the field."

The learned Judge observed that,

"law is well settled that until such community Certificate issued by the competent authority is cancelled in accordance with law, such Community Certificate is to be acted upon and it is not open to be ignored in any collateral proceedings or by any authority including the State."

12. The last of the decisions, viz. order dated 11-10-2002 in W.P. No.23616 of 2001 is also to the same effect.

13. The Supreme Court in R. KANDASAMY's case has not held that no suspicion could be entertained regarding any Community Certificate produced. What it has said is that till the Community Certificate originally issued by the proper authority had not been validly cancelled, effect should be given to the same. The Supreme Court incidentally observed that it was not pronouncing upon the genuineness and the correctness of the community Certificate, for which if there was any doubt, there could be a proper enquiry. This principle has been reiterated by our Court in several decisions as already noticed.

14. The petitioner in the instant case,was appointed on the basis of a Tahsildar's certificate issued to him giving his community as Konda Reddy Scheduled Tribe. At the time the Tahsildar issued the certificate,he had authority to do that. Only after 11-11-1989 the State Government shifted the authority to issue Community Certificates to the Revenue Divisional Officer. Till the certificate is cancelled, it is operative and it should be acted upon. Indeed,there is an enquiry pending. The writ petition filed by the petitioner was disposed of by this Court on 5-6-2002 observing that the District Level Committee constituted to examine the matter regarding the correctness of the certificate issued to persons as belonging to SC and ST should examine the matter relating to the community status of the petitioner and the petitioner should apply to the Committee to have the matter examined and should place all the materials before the said Committee. No doubt, whether or not the original certificate produced by the petitioner is a valid one is to be decided by the District Level Committee. However, as things stand, the original certificate produced by the petitioner had been accepted and acted upon, he was given employment, promoted and he is awaiting further promotion. Having regard to the settled position that till the certificate is duly cancelled in a proper proceeding, it has to be accepted and acted upon. May be if ultimately it is found that the certificate produced by the petitioner is a bogus one, it will be difficult to restore status quo ante. It may not be possible to reclaim successfully the benefits enjoyed by the petitioner. The state of the law being what it is, it cannot be helped. We have the analogy in the provisions of Section 17-B of the Industrial Disputes Act, which require the unsuccessful employer to pay the successful employee

the last drawn wages or to reinstate him in service and if ultimately, the employer is successful after quite a number of years and it is held that the employee had been properly dismissed from service, it would not be possible to get back the benefits enjoyed by the employee. The solution for such a situation lies in early disposal of collateral proceedings. The District Level Committee should move fast and decide about the genuineness of the certificate produced by the petitioner.

15. In view of the discussion above, the writ petition will stand allowed. The relief prayed for is granted to the petitioner, subject to his being eligible for the said relief, however, without reference to the fate of the enquiry into the genuineness of the Community Certificate produced by him. The respondents shall also expedite the proceedings before the District Level Vigilance Committee.

16. The connected miscellaneous petition is closed. There will, however, be no order as to costs.

Index: Yes
Internet: Yes
IGP

To
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